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Supreme Court Of The United States

OCTOBER TERM, 1979

RICHARD F. PACILEO, SHERIFF ..... *Petitioner*

vs. No. 79-2040

JAMES DEAN WALKER ..... *Respondent*

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF CALIFORNIA

BRIEF OF THE STATES OF ARKANSAS AND INDIANA AS AMICI CURIAE

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INTEREST OF AMICI

This brief is filed by Amici pursuant to Rule 42(4) of the Rules of the Supreme Court.

The State of Arkansas is interested in this case for two reasons: (1) it is the state demanding the return of the respondent, James Dean Walker; and (2) during 1979, Arkansas was involved in 295 extradition proceedings and Arkansas was the demanding state in 208 of these proceedings.

The State of Indiana was involved in approximately 300 extradition proceedings in 1979 and was the demanding state in 180 of these proceedings.

Because of the number of extraditions in which the Amici are involved, each is potentially affected by the ruling of the California Supreme Court. Were this Court to adopt that court's ruling, the impact on each of the Amici, as well as other states of the Union, would be most profound.

OPINION BELOW

The judgment or decree of the Supreme Court of the State of California, staying the extradition of James Dean Walker pending a hearing to decide the petition for writ of habeas corpus on its merits, is set out in Appendix "A" to petitioner's Petition for Writ of Certiorari. It is an unreported judgment or decree which is nevertheless final as to the issues presented herein. The order denying a rehearing is set out in Appendix "B" to petitioner's petition for Writ of Certiorari.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

Whether in the context of an interstate extradition proceeding, the courts of the "asylum" or "sending" state have jurisdiction to conduct an evidentiary hearing on habeas corpus to determine the merits of a fugitive's allegations that the prison in which the demanding state may incarcerate him is not presently being operated in conformance with the Eighth Amendment of the United States Constitution.

CONSTITUTIONAL PROVISION INVOLVED

Art. IV, §2, cl. 2 of the United States Constitution:

> A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

SUMMARY OF THE ARGUMENT

The order of the California Supreme Court is violative of the Extradition Clause of Art. IV, §2, cl. 2 of the United States Constitution once the governor of an asylum state has ordered the arrest and return of a fugitive sought by the demanding state, the courts of the asylum state in a habeas corpus petition can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner sought has been charged with the crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. The courts of the asylum state have no jurisdiction to conduct hearings as to the constitutionality of the prison of the demanding state in which the petitioner would be held.

If the Order of the California Supreme Court is upheld, it would enable any fugitive making his way into a state other than the one seeking him, to force the demanding state to litigate the constitutionality of its prison system in a foreign state having no jurisdiction over that system. The result of this would be a "balkanization" of the administration of criminal justice among the states of the union.

ARGUMENT

The respondent, James Dean Walker, was convicted of the first degree murder of a North Little Rock, Arkansas, policeman in December, 1965. His conviction was unanimously affirmed by the Arkansas Supreme Court in *Walker v. State*, 241 Ark. 300-321, 408 SW2d 905 (1966), *certiorari denied, Walker v. Arkansas*, 386 U.S. 682 (1967). Walker subsequently petitioned the federal courts for

Habeas Corpus relief, pursuant to 28 U.S.C. §2254. This petition was denied. *Walker v. Bishop,* 295 F. Supp. 767 (E.D. Ark. 1967), *affirmed,* 408 F.2d 1378 (8th Cir. 1969).

In April, 1975, Walker escaped from the Arkansas Department of Correction and remained at large until he was apprehended in South Lake Tahoe, California in 1979. The Governor of the State of Arkansas submitted his request for respondent Walker's extradition to the Governor of California. On February 13, 1980, the Governor of California honored Arkansas's request and issued a warrant of arrest and rendition. The respondent subsequently attacked the Governor's order via petitioning for habeas corpus wherein he alleged that his confinement in the Arkansas Department of Correction was violative of the Eighth Amendment to the United States Constitution.

On February 27, 1980, the Superior Court of El Dorado County denied Mr. Walker's first petition. On March 6, 1980, the Court of Appeals, Third Appellate District, denied Mr. Walker's second petition for writ of habeas corpus. On March 12, 1980, the United States District Court for the Eastern District of California denied Mr. Walker's third petition.

Mr. Walker then applied to the California Supreme Court for a writ of habeas corpus. On April 9, 1980, that court issued an order directing the El Dorado County Superior Court "to conduct hearings to determine if the penitentiary in which Arkansas seeks to confine petitioner is presently operated in conformance with the Eighth Amendment of the United States Constitution and thereafter decide the petition on its merits." A timely petition for rehearing was denied on April 15, 1980.

On April 21, 1980, upon the application of the petitioner herein, Mr. Justice Rehnquist issued an order temporarily staying the effect of the California Supreme Court's order of April 9. Mr. Justice Rehnquist ordered that a response to the application for stay be filed on or before April 28, 1980. On May 1, Mr. Justice Rehnquist continued the stay order pending the timely filing and disposition of a petition for writ of certiorari.

The order of the California Supreme Court is violative of Art. IV, §2, cl. 2 of the United States Constitution and is in excess of its jurisdiction.

Art. IV, §2, cl. 2 of the United States Constitution provides:

> "A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

The meaning and purpose of this provision, was made clear by this Court in *Michigan v. Doran,* 439 U.S. 282, 99 S.Ct. 530, 58 L.Ed. 2d 521 (1978), wherein it held.

> "The Extradition Clause was intended to enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed. Biddinger v. Commissioner of Police, 245 U.S. 128, 132-133, 62 L.Ed. 193, 38 S.Ct. 41 (1917); Appleyard v. Massachusetts, 203 U.S. 222, 227, 51 L.Ed. 161, 27 S.Ct. 122 (1906). The purpose of the Clause was to preclude any state from becoming a sanctuary for fugitives from justice of another state

and thus "balkanize" the administration of criminal justice among the several states. It articulated, in mandatory language, the concepts of comity and full faith and credit, found in the immediately preceding clause of Art. IV. The Extradition Clause, like the Commerce Clause, served important national objectives of a newly developing country striving to foster national unity. Compare Biddinger, supra, with McLeod v. Dilworth Co., 322 U.S. 327, 330, 88 L.Ed 1304, 64 S.Ct. 1023 (1944). In the administration of justice, no less than in trade and commerce, national unity was thought to be served by de-emphasizing state lines for certain purposes, without impinging on essential state autonomy.

Interstate extradition was intended to be a summary and mandatory executive proceeding derived from the language of Art. IV, §2, cl. 2, of the Constitution. Biddinger, supra, at 132, 62 L.Ed. 193, 38 S.Ct. 41; In re Strauss, 197 U.S. 324, 332, 49 L.Ed. 774, 25 S.Ct. 535 (1905); R. Hurd, A Treatise on the Right of Personal Liberty and the Writ of Habeas Corpus 598 (1858). The Clause never contemplated that the asylum state was to conduct the kind of preliminary inquiry traditionally intervening between the initial arrest and trial."

Michigan v. Doran, supra, 439 U.S. at 287-288.

The Court went on to further dileneate the parameters of habeas corpus once the governor of the asylum state has granted extradition:

"Whatever the people of discretion vested in the governor of an asylum state, cf. Kentucky v. Denni-

> son, 24 How. 66, 107, 16 L.Ed. 717 (1861), the courts of an asylum state are bound by Art. IV, §2, cf. Compton v. Alabama, 214 U.S. 1, 8, 53 L.Ed. 885, 29 St.Ct. 605 (1909), by §3182, and, where adopted, by the Uniform Criminal Extradition Act. A governor's grant of extradition is prima facie evidence that the constitutional and statutory requirements have been met. Cf. Bassing v. Cady, 208 U.S. 386, 392, 52 L.Ed. 540, 28 S.Ct. 392 (1908). Once the governor has granted extradition, a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. These are historic facts readily verifiable."

Michigan v. Doran, supra, 439 U.S. at 288-289.

In spite of this clear language, the California Supreme Court here held that respondent Walker was entitled to a hearing in the California courts as to the constitutionality of the Arkansas penitentiary in which he would be held. It is not expressly clear from the California Supreme Court's order as to what the end result of their inquiry would be. It is clear that the California Supreme Court has no jurisdiction over the institutions of the State of Arkansas and therefore its Order would have no legal effect on the State of Arkansas. *Bigelow v. Virginia*, 421 U.S. 809, 822-825 (1975); *McLeod v. Dilworth Co.*, 322 U.S. 327, 330 (1944); *Mertz v. Mertz*, 271 N.Y. 466, 3 NE2d 597, 598 (1936); *Quong Ham Wah Co. v. Industrial Accident Commission*, 184

Cal. 26, 192 P. 1021, 1025 (1920), *dismissed,* 255 U.S. 445 (1921); *Whitney v. Dodge,* 105 Cal. 192, 38 P. 636, 637 (1894).

The California court's order is implicitly clear, however, that should Arkansas be unsuccessful in its efforts to vindicate its penitentiary system in the California courts, respondent Walker would be entitled to Habeas Corpus relief.

In 1952, this Court patently rejected the procedure which the California Supreme Court has sought to mandate here. In *Sweeney v. Woodall,* 344 U.S. 86, 73 S.Ct. 139, 97 L.Ed. 114 (1952), the respondent, a fugitive from Alabama, resisted extradition from Ohio by alleging that the conditions of his Alabama confinement were violative of the Eighth and Fourteenth Amendments. In rejecting his contention, this Court stated:

> "In the present case, as in the others, a fugitive from justice has asked the federal court in his asylum to pass upon the constitutionality of his incarceration in the demanding state, although the demanding state is not a party before the federal court and although he has made no attempt to raise such a question in the demanding state. The question is whether, under these circumstances, the district court should entertain the fugitive's application on its merits.
>
> Respondent makes no showing that relief is unavailable to him in the courts of Alabama. Had he never eluded the custody of his former jailers he certainly would be entitled to no privilege permitting him to attack Alabama's penal process by an action

brought outside the territorial confines of Alabama in a forum where there would be no one to appear and answer for that State. Indeed, as a prisoner of Alabama, under the provisions of 28 USC §2254, and under the doctrine of Ex parte Hawk (US) supra, he would have been required to exhaust all available remedies in the state courts before making any application to the federal courts sitting in Alabama.

By resort to a form of 'self help,' respondent has changed his status from that of a prisoner of Alabama to that of a fugitive from Alabama. But this should not affect the authority of the Alabama courts to determine the validity of his imprisonment in Alabama. The scheme of interstate rendition, as set forth in both the Constitution and the statutes which Congress has enacted to implement the Constitution, contemplates the prompt return of a fugitive from justice as soon as the state from which he fled demands him; these provisions do not contemplate an appearance by Alabama in respondent's asylum to defend against the claimed abuses of its prison system. Considerations fundamental to our federal system require that the prisoner test the claimed unconstitutionality of his treatment by Alabama in the courts of that State. Respondent should be required to initiate his suit in the courts of Alabama, where all parties may be heard, where all pertinent testimony will be readily available and where suitable relief, if any is necessary, may be fashioned.

The District Court properly dismissed the application for habeas corpus on its face, and the Court of

> Appeals erred in holding that the applicant was entitled to a hearing in the District Court of Ohio on the merits of his constitutional claim against prison officials of Alabama."

Sweeney v. Woodall, supra, 344 U.S. at 88-90.

In making its decision in *Sweeney*, this Court cited to an earlier case, *Johnson v. Matthews,* 182 F.2d 677 (D.C. Cir. 1950), *Sweeney v. Woodall,* supra, 344 U.S. at 88. In *Johnson,* the court rejected a fugitive's contention that the asylum state, (there, the District of Columbia), should conduct a hearing into the constitutionality of his treatment by the demanding state. In rejecting Johnson's claim the court there noted:

> "The question before us is whether a court (either state or federal) in the asylum state can hear and determine the constitutional validity of phases of the penal action by the demanding state in respect to the fugitive or his offense. We think that it cannot do so. Authorities, sound theory of government, and the practical aspects of the problem all require that conclusion.[5]

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[5]. 2 Story Constitution §1809 (5th ed. 1891): "But, however the point may be as to foreign nations, it cannot be questioned that it is of vital importance to the public administration of criminal justice, and the security of the respective States, that criminals who have committed crimes therein should not find an asylum in other States, but should be surrendered up for trial and punishment. It is a power most salutary in its general operation, by discouraging crimes and cutting off the chances of escape from punishment. It will promote harmony and good feelings among the States, and it will increase the general sense of the blessings of the national government. It will, moreover, give strength to a great moral duty, which neighboring States especially owe to each other, by elevating the policy of the mutual suppression of crimes into a legal obligation. Hitherto it has proved as useful in practice as it is unexceptionable in its character."

The problem is not merely one of *forum non conveniens*. It involves the interrelationship of governments, both among the states and between the states and the Federal Government. The quoted provision of the Constitution is in the nature of a treaty stipulation between the states, and compliance is a matter of agreed executive comity. In Appleyard v. Massachusetts[6] the Supreme Court said: 'The constitutional provision relating to fugitives from justice, as the history of its adoption will show, is in the nature of a treaty stipulation entered into for the purpose of securing a prompt and efficient administration of the criminal laws of the several states, — an object of the first concern to the people of the entire country, and which each state is bound, in fidelity to the Constitution, to recognize. A faithful, vigorous enforcement of that stipulation is vital to the harmony and welfare of the states. And while a state should take care, within the limits of the law, that the rights of its people are protected against illegal action, the judicial authorities of the Union should equally take care that the provisions of the Constitution be not so narrowly interpreted as to enable offenders against the laws of a state to find a permanent asylum in the territory of another state.'

While the provision of the Constitution, being specific in its reference to 'State', may not apply to the District of Columbia, the same basic theory underlies the federal statute which clearly does apply. Both Constitution and statute are explicit and

6. 1906, 203 U.S. 222, 227-228, 27 S.Ct. 122, 124, 51 L.Ed. 161, 163, 7 Ann. Cas. 1073.

mandatory. They require — not merely suggest — that the fugitive, having been secured, be delivered to the demanding state.

The law of nations, absent treaties, contemplates that every nation control the entrance *vel non* of persons into its borders; those whom it wishes to stay, stay.[7] Since almost every nation wishes, however, to enforce its criminal laws without nullification by the criminal through the simple expedient of leaving the country, treaties of extradition are general throughout the world.[8] The complete chaos which would have enveloped law enforcement in the American colonies in the absence of extradition agreements became evident long before the Constitution was written. Such an agreement was incorporated in the Articles of Confederation.[9] Without debate it was continued in the Constitution.[10]

The Federal Government has no function in this interstate arrangement, except that its courts may see, upon petition for *habeas corpus,* that the states abide the compact; and, of course, its territories must obey the statute. To say that the federal courts may interpose in this process their judgment of the internal processes of the states and the fidelity of their officials to their duties, is to nullify the agreement

7. 2 Hyde, International Law 1012, 1015 (2d rev.ed. 1945). See also 1 Curtis, Constitutional History of the United States 605-606 (1889); 2 Story, op. cit. supra note 5, §1808 n. (a); 1 Cooley, Constitutional Limitations 52 (8th ed. 1927).

8. 2 Hyde, op. cit. supra note 7, at 1016 et seq.

9. Art. IV, par. 2.

10. 2 Story, op. cit. supra note 5, §1807; 1 Curtis, op. cit. supra note 5, at 601-604; 1 Elliot, Debates 229, 272, 304 (2d ed. 1888).

embedded in the Constitution and to reestablish the rule of the law of nations which it was intended to disestablish. The federal courts have no power to nullify a provision in the Constitution.

Of course, appellant has a right to test in a federal court the constitutional validity of his treatment by Georgia authorities. But that test cannot come as a part of the constitutional process of returning a fugitive to the state where he is charged. If this fugitive's constitutional rights are being violated in Georgia, he can and should protect them in Georgia. Not only state courts but a complete system of federal courts are there.

The basic premise of appellant's position is that he could not get fair treatment in the courts of Georgia, either state or federal. Every argument in support of power in the District of Columbia court to consider and determine whether appellant should be released because of anticipated ill-treatment by executive officers of Georgia comes in the final analysis to the essential proposition that appellant's rights would not be protected by the courts of Georgia. Those courts are there. They are charged with the duty of protecting this prisoner and any other in custody in that state. If they perform that duty, appellant would be as adequately protected by their order as he would be by an order of the court here; he would have no basis for applying to the court here.

We are asked to assume that appellant would not be protected by the courts in Georgia. We not only decline to make the assumption but we repudiate

the suggestion that we make it. We will not impugn either the capacity or the integrity of the state courts of Georgia or of any other state. And even if we were to assume, upon the basis of this fugitive's allegations, that the state courts are impervious to his assertions, we would make no such asumption concerning the federal courts having jurisdiction in that state. Those courts of the United States are as capable and faithful as are the courts of this or any other jurisdiction. If that Court of Appeals errs, *certiorari* to the Supreme Court will lie.

If we will not assume the non-availability of courts in Georgia, we are asked to permit petitioner to present evidence upon that non-availability and then to determine the question. There is an established procedure for the correction of error or dereliction on the part of every court in the country, and where constitutional rights are involved the Supreme Court of the United States stands watchman over every court, state or federal. It would be an act of unwarranted arrogance for us to ascribe to ourselves virtue superior to that of other courts and so to assert power to hear and determine the faithfulness to duty of a sister court occupying a place like ours in the federal system. We have not the slightest semblance of authority over such courts. We might differ with them in opinion, but to us the availability of the Georgia federal courts to protect appellant is not 'merely a presumption'."

Johnson v. Matthews, supra, 182 F.2d at 679-681; also see, *Price v. Pitchess*, 556 F.2d 926, 928 (9th Cir. 1977); *United States v. Donovan*, 321 F.2d 114, 116 (2nd Cir. 1963); *Garri-*

son v. Smith, 413 F. Supp. 747, 756-757 (N.D. Miss. W.D. 1976); *Kyles v. Preston,* 253 F. Supp. 628, 629 (D.C.D. 1966).

The argument might be raised that this case has different ramifications from *Sweeney* in that the Arkansas prison system was declared unconstitutional. The amici note that at this point in time, at least part of the prison system of 19 states have been declared unconstitutional and the systems of 10 other states are currently under challenge on constitutional grounds.[1] Thus, the prison systems of *more than one-half* of the States are accused of or have been found to be unconstitutional in some aspect. Amici note in passing that while the California penal system has not been ruled unconstitutional, its record has not been spotless. In a race riot at Soledad prison on August 19, 1979, two guards and twenty inmates were injured. On February 15, 1980, some 600 inmates seized eight dormitories at the Chino Institution, setting fires and smashing furniture.

Such contention would ignore the main principle of *Sweeney, Doran* and *Johnson*; namely, that the State and federal courts of the demanding state are the proper forum for resolution of the fugitive's allegations.

The emphasis in both *Sweeney, Doran* and *Johnson* on the ability of the federal courts of the demanding state to

[1]"National Prison Project Status Report — The Courts and Prisons", April 1, 1980. At least part of the prison system has been declared unconstitutional in the following states: Ohio, Illinois, Missouri, Colorado, Arizona, Florida, New Hampshire, Delaware, Maryland, Kentucky, Wyoming, Georgia, Alabama, Mississippi, Louisiana, Tennessee, Oklahoma, Arkansas, and Rhode Island. The States whose systems are now under constitutional challenge are: Maine, Massachusetts, North Carolina, South Carolina, Indiana, Texas, New Mexico, Utah, Iowa and Nevada.

protect the rights of prisoners in those states is not lost here. A long line of inmate litigation regarding constitutionality of Arkansas prison conditions culminated in the consent decree embodied in *Finney v. Mabry,* 458 F. Supp. 720 (E.D. Ark. 1978). Pursuant to that decree, a Compliance Coordinator was retained and the parties to the decree now anticipate that full compliance will occur on or about March 1, 1981. Also, since September, 1979, Arkansas has had a new director of corrections, and a new warden at the Cummins unit, both of whom were brought in from out-of-state. Of course, the Amicus from the State of Arkansas would not expect respondent, Walker, to know this since he elected to "take a hike" five years ago.

In view of these developments and the long line of decisions noted in the petitioner's brief at pages 14 and 15, it goes without saying that the federal courts in Arkansas have been most attentive and protective of the rights of Arkansas prisoners.

The order of the California Supreme Court is erroneous in another aspect. If the order is held valid, the ramifications would be cataclysmic for extradition throughout the United States. As the Court noted in *Michigan v. Doran,* supra:

> "The purpose of the [extradition] clause was to preclude any state from becoming a sanctuary for fugitives from justice of another state and thus 'balkanize' the administration of criminal justice among the several states." 439 U.S. at 287.

If the California Supreme Court's order is left standing, the result will be that *any* fugitive of *any* state who is able to make it across the state line and into an asylum

state will, upon apprehension, be able to challenge the constitutionality of the prison system of the demanding state. Pursuant to the holding of the California Supreme Court, a hearing would then be necessary on that issue in the asylum state.

The result of this would be that justice would be delayed and frustrated while officials of the demanding state were forced to bivouac in the asylum state and defend their institutions before a court which had no jurisdiction over these institutions.

As noted in the Interest of Amici statement, in 1979, Arkansas was involved in 295 extradition proceedings, and was the demanding state in 208 of those proceedings. During the same period, Indiana handled approximately 300 extraditions, 180 of which it was the demanding state. It does not take an Einstein to realize that the cost of litigating the constitutionality of their prisons in the fugitives' asylum states could easily run into millions of dollars annually. The result would be that states from which a fugitive fled would be forced to choose between cuts in state spending in other areas of social concern, financial disaster, or, simply forgetting the extradition of fugitives altogether.

Amici submit that it was just such absurd results which the founding fathers sought to avoid by the implementation of the Extradition Clause. This Court, through the years, has consistently agreed. *Michigan v. Doran*, supra; *Sweeney v. Woodall*, supra; *Dye v. Johnson*, 338 U.S. 864 (1949); *Biddinger v. Commissioner of Police*, 245 U.S. 128, 135 (1917); *Marbles v. Creecy*, 215 U.S. 63, 69 (1909); *Innes v. Tobin*, 240 U.S. 127 (1916); *Appleyard v. Massachusetts*,

203 U.S. 222, 226-228 (1906); *Lascelles v. Georgia*, 148 U.S. 537, 544-545 (1893).

In sum, the order of the California Supreme Court is violative of Art. IV, §2, cl. 2 of the Constitution, as well as being in excess of its jurisdiction. The Order, if upheld, would work an intolerable hardship on each of the United States and would amount to an emasculation of the Extradition Clause.

CONCLUSION

For the foregoing reasons and authorities of law, the amici pray that the writ of certiorari in this matter be granted.

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